

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:08CV488

HOWELL W. WOLTZ, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 UNITED STATES OF AMERICA, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

**ORDER**

**THIS MATTER** comes before the Court upon Petitioner's § 2241 motion that was construed as a § 2255 motion and transferred to this Court from the United States District Court for the Southern District of West Virginia on October 22, 2008.

On November 13, 2008, this Court entered an Order stating, for the reasons set forth therein, that Petitioner must inform the Court whether or not he consented to his § 2241 motion being construed as a § 2255 motion. Petitioner was clearly notified that if he elected not to have his § 2241 motion construed as a § 2255 motion, this Court would dismiss his filing for lack of jurisdiction. On November 26, 2008, Petitioner filed a response indicating that he did not want his § 2241 motion construed as a § 2255 motion. (Doc. No. 3 at 7-8)

**THEREFORE, IT IS HEREBY ORDERED** that Petitioner's § 2241 motion is **DISMISSED without prejudice** for lack of jurisdiction. Petitioner requests that this court issue a certificate of appealability. Such a certificate is not required to appeal this order. See 28 U.S.C. § 2253(c)(1) (certificate required for habeas corpus proceedings arising out of state

detention and § 2255 proceedings).

This 3 December 2008.

A handwritten signature in green ink, appearing to read "W. Earl Britt", is positioned above a horizontal line.

W. Earl Britt  
Senior U.S. District Judge